

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ADJUSTACAM LLC,

Plaintiff,

v.

AMAZON.COM, INC., *et al.*,

Defendants.

Case No. 6:10-cv-329-LED

JURY TRIAL DEMANDED

**ANSWER OF WAL-MART STORES, INC. TO THIRD AMENDED COMPLAINT
AND COUNTERCLAIM**

Defendant and Counterclaimant, Wal-Mart Stores, Inc. (“Walmart”) files this Answer to Plaintiff’s Third Amended Complaint and Counterclaim against Plaintiff.

PARTIES

1. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Third Amended Complaint, and therefore denies them.

2. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Third Amended Complaint, and therefore denies them.

3. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Third Amended Complaint, and therefore denies them.

4. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Third Amended Complaint, and therefore denies them.

5. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Third Amended Complaint, and therefore denies them.

6. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Third Amended Complaint, and therefore denies them.

7. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Third Amended Complaint, and therefore denies them.

8. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Third Amended Complaint, and therefore denies them.

9. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the Third Amended Complaint, and therefore denies them.

10. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the Third Amended Complaint, and therefore denies them.

11. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Third Amended Complaint, and therefore denies them.

12. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Third Amended Complaint, and therefore denies them.

13. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Third Amended Complaint, and therefore denies them.

14. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Third Amended Complaint, and therefore denies them.

15. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the Third Amended Complaint, and therefore denies them.

16. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the Third Amended Complaint, and therefore denies them.

17. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Third Amended Complaint, and therefore denies them.

18. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the Third Amended Complaint, and therefore denies them.

19. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the Third Amended Complaint, and therefore denies them.

20. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the Third Amended Complaint, and therefore denies them.

21. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Third Amended Complaint, and therefore denies them.

22. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the Third Amended Complaint, and therefore denies them.

23. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the Third Amended Complaint, and therefore denies them.

24. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 of the Third Amended Complaint, and therefore denies them.

25. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of the Third Amended Complaint, and therefore denies them.

26. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 of the Third Amended Complaint, and therefore denies them.

27. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 of the Third Amended Complaint, and therefore denies them.

28. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 of the Third Amended Complaint, and therefore denies them.

29. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the Third Amended Complaint, and therefore denies them.

30. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30 of the Third Amended Complaint, and therefore denies them.

31. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31 of the Third Amended Complaint, and therefore denies them.

32. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 32 of the Third Amended Complaint, and therefore denies them.

33. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33 of the Third Amended Complaint, and therefore denies them.

34. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34 of the Third Amended Complaint, and therefore denies them.

35. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 35 of the Third Amended Complaint, and therefore denies them.

36. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 36 of the Third Amended Complaint, and therefore denies them.

37. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37 of the Third Amended Complaint, and therefore denies them.

38. Walmart admits that it has a place of business in Bentonville, Arkansas.

JURISDICTION AND VENUE

39. Walmart admits that Plaintiff's present action purports to be an action arising under the patent laws of the United States, Title 35 of the United States Code. Walmart admits that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a). Each and every other allegation contained in paragraph 39 of the Third Amended Complaint is denied to the extent that the allegations relate to Walmart. Walmart is without information or knowledge sufficient to admit or deny the remaining allegations contained in paragraph 39 of the Third Amended Complaint with respect to any of the other Defendants in this action, and therefore denies such allegations.

40. Walmart denies the allegations contained in paragraph 40 of the Third Amended Complaint to the extent that the allegations relate to Walmart. Walmart is without information or knowledge sufficient to admit or deny the remaining allegations contained in paragraph 40 of the Third Amended Complaint with respect to any of the other Defendants in this action, and therefore denies such allegations.

COUNT I

41. Walmart admits that, on its face, United States Patent No. 5,855,343 ("the '343 Patent") is entitled "Camera Clip." Walmart admits that, on its face, the '343 Patent states that it

was filed on March 7, 1997, and that it was issued on January 5, 1999. Walmart denies that the '343 Patent was duly and legally issued. Each and every other allegation contained in paragraph 41 of the Third Amended Complaint is denied.

42. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 42 of the Third Amended Complaint and therefore denies them.

43. Walmart denies the allegations contained in paragraph 43 of the Third Amended Complaint.

44. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44 of the Third Amended Complaint, and therefore denies them.

45. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 45 of the Third Amended Complaint, and therefore denies them.

46. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 46 of the Third Amended Complaint, and therefore denies them.

47. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 47 of the Third Amended Complaint, and therefore denies them.

48. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 48 of the Third Amended Complaint, and therefore denies them.

49. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 49 of the Third Amended Complaint, and therefore denies them.

50. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 50 of the Third Amended Complaint, and therefore denies them.

51. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 51 of the Third Amended Complaint, and therefore denies them.

52. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 52 of the Third Amended Complaint, and therefore denies them.

53. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 53 of the Third Amended Complaint, and therefore denies them.

54. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 54 of the Third Amended Complaint, and therefore denies them.

55. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 55 of the Third Amended Complaint, and therefore denies them.

56. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 56 of the Third Amended Complaint, and therefore denies them.

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58. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 58 of the Third Amended Complaint, and therefore denies them.

59. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 59 of the Third Amended Complaint, and therefore denies them.

60. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 60 of the Third Amended Complaint, and therefore denies them.

61. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 61 of the Third Amended Complaint, and therefore denies them.

62. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 62 of the Third Amended Complaint, and therefore denies them.

63. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 63 of the Third Amended Complaint and therefore denies them.

64. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 64 of the Third Amended Complaint and therefore denies them.

65. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 65 of the Third Amended Complaint and therefore denies them.

66. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 66 of the Third Amended Complaint and therefore denies them.

67. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 67 of the Third Amended Complaint and therefore denies them.

68. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 68 of the Third Amended Complaint and therefore denies them.

69. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 69 of the Third Amended Complaint and therefore denies them.

70. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 70 of the Third Amended Complaint and therefore denies them.

71. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 71 of the Third Amended Complaint and therefore denies them.

72. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 72 of the Third Amended Complaint and therefore denies them.

73. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 73 of the Third Amended Complaint and therefore denies them.

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75. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 75 of the Third Amended Complaint and therefore denies them.

76. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 76 of the Third Amended Complaint and therefore denies them.

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79. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 79 of the Third Amended Complaint and therefore denies them.

80. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 80 of the Third Amended Complaint and therefore denies them.

81. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 81 of the Third Amended Complaint and therefore denies them.

82. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 82 of the Third Amended Complaint and therefore denies them.

83. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 83 of the Third Amended Complaint and therefore denies them.

84. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 84 of the Third Amended Complaint and therefore denies them.

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86. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 86 of the Third Amended Complaint and therefore denies them.

87. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 87 of the Third Amended Complaint and therefore denies them.

88. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 88 of the Third Amended Complaint and therefore denies them.

89. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 89 of the Third Amended Complaint and therefore denies them.

90. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 90 of the Third Amended Complaint and therefore denies them.

91. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 91 of the Third Amended Complaint and therefore denies them.

92. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 92 of the Third Amended Complaint and therefore denies them.

93. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 93 of the Third Amended Complaint and therefore denies them.

94. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 94 of the Third Amended Complaint and therefore denies them.

95. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 95 of the Third Amended Complaint and therefore denies them.

96. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 96 of the Third Amended Complaint and therefore denies them.

97. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 97 of the Third Amended Complaint and therefore denies them.

98. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 98 of the Third Amended Complaint and therefore denies them.

99. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 99 of the Third Amended Complaint and therefore denies them.

100. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 100 of the Third Amended Complaint and therefore denies them.

101. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 101 of the Third Amended Complaint and therefore denies them.

102. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 102 of the Third Amended Complaint and therefore denies them.

103. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 103 of the Third Amended Complaint and therefore denies them.

104. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 104 of the Third Amended Complaint and therefore denies them.

105. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 105 of the Third Amended Complaint and therefore denies them.

106. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 106 of the Third Amended Complaint and therefore denies them.

107. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 107 of the Third Amended Complaint and therefore denies them.

108. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 108 of the Third Amended Complaint and therefore denies them.

109. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 109 of the Third Amended Complaint and therefore denies them.

110. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 110 of the Third Amended Complaint and therefore denies them.

111. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 111 of the Third Amended Complaint and therefore denies them.

112. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 112 of the Third Amended Complaint and therefore denies them.

113. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 113 of the Third Amended Complaint and therefore denies them.

114. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 114 of the Third Amended Complaint and therefore denies them.

115. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 115 of the Third Amended Complaint and therefore denies them.

116. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 116 of the Third Amended Complaint and therefore denies them.

117. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 117 of the Third Amended Complaint and therefore denies them.

118. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 118 of the Third Amended Complaint and therefore denies them.

119. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 119 of the Third Amended Complaint and therefore denies them.

120. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 120 of the Third Amended Complaint and therefore denies them.

121. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 121 of the Third Amended Complaint and therefore denies them.

122. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 122 of the Third Amended Complaint and therefore denies them.

123. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 123 of the Third Amended Complaint and therefore denies them.

124. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 124 of the Third Amended Complaint and therefore denies them.

125. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 125 of the Third Amended Complaint and therefore denies them.

126. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 126 of the Third Amended Complaint and therefore denies them.

127. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 127 of the Third Amended Complaint and therefore denies them.

128. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 128 of the Third Amended Complaint and therefore denies them.

129. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 129 of the Third Amended Complaint and therefore denies them.

130. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 130 of the Third Amended Complaint and therefore denies them.

131. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 131 of the Third Amended Complaint and therefore denies them.

132. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 132 of the Third Amended Complaint and therefore denies them.

133. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 133 of the Third Amended Complaint and therefore denies them.

134. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 134 of the Third Amended Complaint and therefore denies them.

135. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 135 of the Third Amended Complaint and therefore denies them.

136. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 136 of the Third Amended Complaint and therefore denies them.

137. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 137 of the Third Amended Complaint and therefore denies them.

138. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 138 of the Third Amended Complaint and therefore denies them.

139. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 139 of the Third Amended Complaint and therefore denies them.

140. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 140 of the Third Amended Complaint and therefore denies them.

141. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 141 of the Third Amended Complaint and therefore denies them.

142. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 142 of the Third Amended Complaint and therefore denies them.

143. Walmart lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 143 of the Third Amended Complaint and therefore denies them.

144. Walmart denies each and every allegation contained in paragraph 144 of the Third Amended Complaint.

145. Walmart denies each and every allegation contained in paragraph 145 of the Third Amended Complaint.

146. Walmart denies each and every allegation contained in paragraph 146 of the Third Amended Complaint.

147. Walmart denies each and every allegation contained in paragraph 147 of the Third Amended Complaint.

148. Walmart admits that AdjustaCam is not claiming pre-suit damages based upon constructive notice of the '343 Patent. Walmart denies each and every other allegation contained in paragraph 148 of the Third Amended Complaint to the extent that the allegations relate to

Walmart. Walmart is without information or knowledge sufficient to admit or deny the remaining allegations contained in paragraph 148 of the Third Amended Complaint with respect to any of the other Defendants in this action, and therefore denies such allegations.

149. Walmart denies each and every allegation contained in paragraph 149 of the Third Amended Complaint to the extent that the allegations relate to Walmart. Walmart is without information or knowledge sufficient to admit or deny the remaining allegations contained in paragraph 149 of the Third Amended Complaint with respect to any of the other Defendants in this action, and therefore denies such allegations.

RESPONSE TO PRAYER FOR RELIEF

Walmart denies that Plaintiff is entitled to any of the relief sought in Plaintiff's Prayer for Relief to the extent relief is sought against Walmart, and to the extent that the Prayer for Relief contains any factual allegations concerning Walmart, Walmart denies those allegations.

DEMAND FOR JURY TRIAL

Walmart admits that Plaintiff demands a trial by jury. Walmart also demands a jury trial pursuant to Fed. R. Civ. P. 38.

To the extent not expressly admitted above, Walmart denies the factual allegations contained in the Third Amended Complaint.

WALMART'S AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(NON-INFRINGEMENT)

1. Walmart has not infringed, and is not infringing, either literally or under the doctrine of equivalents, any valid claim of the '343 Patent.

SECOND AFFIRMATIVE DEFENSE

(PATENT INVALIDITY)

2. Upon information and belief, the '343 Patent is invalid and unenforceable for failing to satisfy the conditions of patentability set forth in the U.S. patent laws, including, but not limited to, 35 U.S.C. §§ 101, 102, 103, and/or 112.

THIRD AFFIRMATIVE DEFENSE

(ESTOPPEL)

3. Plaintiff's claims are barred in whole or in part by the equitable doctrine of estoppel, including, but not limited to, the doctrine of prosecution history estoppel. Upon information and belief, by reason of proceedings in the U.S. Patent and Trademark Office during the prosecution of the applications that resulted in the '343 Patent, as is shown by its file history, and by reason of amendment, cancellation, or abandonment of claims, and the admissions and other statements made therein by or on behalf of the patentee(s), Plaintiff is estopped from claiming a construction of the '343 patent that would cause any valid claim to cover or include any method or system made, used, offered for sale, sold, or imported by Walmart.

FOURTH AFFIRMATIVE DEFENSE

(FAILURE TO STATE A CLAIM)

4. Upon information and belief, the Third Amended Complaint fails to state facts upon which a claim for relief can be granted against Walmart.

FIFTH AFFIRMATIVE DEFENSE

(LACHES)

5. Plaintiff's claims are barred in whole or in part by the doctrine of laches.

SIXTH AFFIRMATIVE DEFENSE

(DAMAGES LIMITATIONS)

6. Upon information and belief, to the extent Plaintiff may be entitled to damages, any claim for damages for patent infringement by Plaintiff is limited by 35 U.S.C. §§ 286 and by 287 to those damages occurring only after notice of infringement.

SEVENTH AFFIRMATIVE DEFENSE

(FAILURE TO MITIGATE DAMAGES)

7. Plaintiff's claims are barred in whole or in part due to Plaintiff's failure to mitigate damages, if any.

EIGHTH AFFIRMATIVE DEFENSE

(UNCLEAN HANDS)

8. Plaintiff's claims are barred in whole or in part by the doctrine of unclean hands.

NINTH AFFIRMATIVE DEFENSE

(DISCLAIMER)

9. The claims for relief are barred, in whole or in part, by the doctrine of disclaimer.

TENTH AFFIRMATIVE DEFENSE

(NO INJUNCTIVE RELIEF)

10. To the extent that Plaintiff seeks injunctive relief for alleged infringement, the relief sought by Plaintiff is unavailable because any alleged injury to Plaintiff is not immediate or irreparable and because Plaintiff has an adequate remedy at law for any alleged injury.

ELEVENTH AFFIRMATIVE DEFENSE

(NO ATTORNEYS' FEES OR COSTS)

11. On information and belief, Walmart has not engaged in any conduct that entitles Plaintiff to attorneys' fees or costs.

TWELFTH AFFIRMATIVE DEFENSE

(LICENSE, IMPLIED LICENSE, AND/OR PATENT EXHAUSTION)

12. Plaintiff's infringement claims are barred by one or more of the doctrines of license, implied license, and patent exhaustion.

COUNTERCLAIM

For its counterclaim, Walmart alleges as follows:

NATURE OF THE ACTION

1. This counterclaim seeks a declaratory judgment of non-infringement, invalidity, and unenforceability of the '343 Patent asserted by Plaintiff in this action. Walmart seeks judgment under the patent laws of the United States, 35 U.S.C. §§ 101, *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202.

THE PARTIES

2. Walmart is a corporation organized under the laws of the State of Delaware, with its principal place of business in Bentonville, Arkansas.

3. Upon information and belief, Plaintiff AdjustaCam LLC ("AdjustaCam") is a Texas Limited Liability Company with its principal place of business in Frisco, Texas.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this counterclaim pursuant to 28 U.S.C. §§ 1331, 1338, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202.

5. AdjustaCam has consented to personal jurisdiction by commencing its action for patent infringement in this judicial district, as set forth in Plaintiff's Third Amended Complaint.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), (c), and 1400(b).

A CONTROVERSY EXISTS

7. AdjustaCam claims to be the exclusive licensee of the '343 Patent with rights to enforce the '343 Patent and sue infringers.

8. AdjustaCam claims that the '343 Patent is valid and enforceable and that the activities of Walmart infringe the '343 patent. Walmart denies the claims of AdjustaCam, and therefore, there exists an actual controversy between the parties as to the invalidity, unenforceability, and lack of infringement of the '343 Patent, as to which Walmart requests a declaratory judgment in its favor.

9. Based upon the foregoing conduct of AdjustaCam, this is an exceptional case under 35 U.S.C. § 285 and Walmart is entitled to recover its reasonable attorneys' fees.

COUNT I

DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '343 PATENT

10. Walmart does not infringe the '343 Patent and has not infringed the '343 Patent.

COUNT II

DECLARATORY JUDGMENT OF INVALIDITY AND UNENFORCEABILITY OF THE '343 PATENT

11. The claims of the '343 Patent are invalid and unenforceable because they fail to satisfy conditions for patentability specified in 35 U.S.C. §§ 101, *et seq.*, including, without limitation, sections 101, 102, 103, and/or 112.

WALMART'S PRAYER FOR RELIEF

Walmart respectfully requests that this Court enter judgment in its favor and grant the following relief:

- A. Dismissal of Plaintiff's claims in their entirety with prejudice;
- B. A finding that Plaintiff take nothing by way of its Third Amended Complaint;
- C. A declaration that Walmart does not infringe the '343 Patent;
- D. A declaration that the '343 Patent is invalid and unenforceable;
- E. An order awarding Walmart its costs;

F. An order finding that this is an exceptional case and awarding Walmart its reasonable attorneys' fees pursuant to 35 U.S.C. § 285; and

G. An order awarding such additional relief as the Court may deem appropriate and just under the circumstances.

WALMART'S DEMAND FOR JURY TRIAL

Walmart hereby demands a trial by jury on all issues so triable.

Dated: August 26, 2011

Respectfully submitted,

/s/ Victor de Gyarfas
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FOLEY & LARDNER LLP
555 South Flower Street, Suite 3500
Los Angeles, CA 90071-2411
Phone: 213-972-4500
Fax: 213-486-0065

Attorneys for Defendant Wal-Mart Stores, Inc.

CERTIFICATE OF SERVICE

The undersigned certifies that the ANSWER OF WAL-MART STORES, INC. TO THIRD AMENDED COMPLAINT AND COUNTERCLAIM was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who have consented to electronic service.

/s/ Victor de Gyrfas